

## Arrests or Convictions

<b>PURPOSE:</b>	To establish guidelines for taking appropriate action(s) when an employee has been arrested or convicted of crime(s) that could be relevant to employment with the State, including arrest(s) and conviction(s) found in background checks upon promotion, demotion, or transfer from one position or agency to another. These guidelines may also be relevant in determining appropriate action(s) involving the services provided by volunteers and contractors.
<b>SCOPE:</b>	This policy applies to all merit and non-merit agencies subject to the jurisdiction of the State Personnel Department.
<b>STATEMENT OF POLICY:</b>	The State is committed to providing the public with qualified staff who possess good character and standards. This policy will provide basic safeguards and assist in maintaining a safe work environment for employees, clients and customers of state agencies.
<b>DEFINITIONS:</b>	<p>Crime : A felony or misdemeanor for which a person might be imprisoned.</p> <p>Arrest: The taking of a person into custody, that s/he may be held to answer for a criminal charge.</p> <p>Conviction: A judgement on a verdict or a plea of guilty or <i>nolo contendere</i>, and/or a finding of guilt substantiated by the evidence which results in the payment of fines, forfeiture of collateral or bond, restitution, deferred adjudication or sentencing, probation, confinement, suspended sentence, pre-trial diversion agreement, or any other penalty imposed by a court of law or agreed upon by the accused.</p> <p>Infraction: A violation of a statute for which a person might be fined, but not imprisoned.</p> <p>Nexus: The following factors may be considered in determining whether pending charges or convictions have a nexus to the employee's duties and responsibilities: nature of the offense; sentence imposed; other convictions/infractions; specific proscription in Indiana Code; affect on any license which is requisite to performance of the job; risk of recidivism, reasonable inferences about problems with self control, propensity for violence, honesty, or dependability; erosion of confidence in or impugning the reputation of the individual or agency;</p>

objections the victim/citizen may have to being the perpetrator's employer; and length of time since judgement.

## **PROCEDURES AND RESPONSIBILITIES:**

A satisfactory criminal history check is a condition of employment in certain jobs, certain volunteer work and some contracts. This requirement will ensure the State is in compliance with statutes and ensure there is no nexus between a crime committed and the person's job duties and responsibilities. Convictions and arrests with pending charges found during a background check performed when a current state employee transfers, promotes, or demotes to another position or agency will be considered in determining whether the employee will be transferred, promoted or demoted or whether disciplinary action, including dismissal from state employment, is appropriate.

Citations for infractions which occur during the employee's off duty hours must be reported if the citation will have an impact upon the employee's ability to perform assigned duties (e.g. loss/suspension of driving privileges). Such report is required in writing to the Appointing Authority or designee as soon as possible but not more than five (5) calendar days from the date of the citation.

Whenever an employee is: (a) cited for an infraction while on duty or (b) arrested for any misdemeanor or felony, the employee shall report this matter, in writing, to the Appointing Authority or designee as soon as possible but not more than five (5) calendar days from the date of the arrest or citation. Failure to report in accordance with the above shall be considered a violation and may subject the staff person to discipline, up to and including dismissal.

At the discretion of the Appointing Authority or designee, the employee may be carried on Unauthorized Leave (UL) for time spent in jail. Five (5) consecutive UL days may be cause for dismissal. Vacation leave may not be taken to cover periods of incarceration, unless the vacation was scheduled prior to the employee being incarcerated.

An employee who has been arrested and charged with a crime may be suspended pending an administrative investigation and/or the disposition of any charges filed against the employee. The determination as to whether an employee is suspended shall be based upon the nature and circumstances of the alleged offense and other factors relating to nexus.

It is the responsibility of any employee with pending criminal charges to provide to the Appointing Authority or

designee written documentation (i.e. court record) of the disposition of the charges within five (5) calendar days after receiving notification. Failure to do so will be considered a violation of this policy and may subject the employee to discipline, up to and including dismissal.

If the employee is on suspension pending administrative investigation and/or the disposition of any charges, and the outcome is favorable to the employee, s/he shall be returned from suspension and made whole, less any wages that the person earned during the period of suspension.

Disciplinary action, including dismissal, may be taken if the investigation or disposition of the charges establishes just cause or if the individual is an "at will" employee.

**REFERENCES:**

IC 35-33-1-5; IC 33-1-13-1; IC 5-2-5-1; IC 4-13-2-14.7;  
IC 12-24-3-2; 31 IAC 1-10-2; 31 IAC 2-12-2  
UNITY Settlement; AFSCME Settlement

**EFFECTIVE DATE:**

June 1, 2003

**APPROVAL:**

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D. Sue Roberson, State Personnel Director

DATE: \_\_\_\_\_